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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1973

No. 73 605

IRWIN HAL BOBROW,

Petitioner,

vs.

THE MUNICIPAL COURT OF THE
LOS ANGELES JUDICIAL DISTRICT,
COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES AND TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES THEREOF:

The petitioner, IRWIN HAL BOBROW, respectfully prays that a Writ of Certiorari issue

to review the judgment of the Supreme Court of the State of California entered in this proceeding on July 18, 1973.

OPINION BELOW

The Supreme Court of the State of California rendered no opinion and denied a hearing.

JURISDICTION

Petitioner's Petition for Hearing was denied by the Supreme Court of California on July 18, 1973. It is subject to no further review in a state tribunal. The decision is final. This court's jurisdiction is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether multiple prosecution in different courts for closely related offenses arising out of one arrest and committed simultaneously is repugnant to the due process clause of the Fourteenth Amendment of the United States Constitution.

2. Whether an arrest for possession of marijuana in a vehicle and a multiple prosecution, one for a felony by the District Attorney of the County of Los Angeles on a charge of "possessing marijuana", and a subsequent prosecution for "driving under the influence" of marijuana, a misdemeanor, by the City Attorney of the City of Los Angeles, after disposition of the felony case by an admission of guilt, is contrary to the provisions of the double jeopardy clause of the Fifth Amendment of the United States Constitution.

STATEMENT OF THE CASE

Petitioner and a friend were driving a vehicle and were stopped by Highway Patrolmen. The patrolmen observed petitioner to have the symptoms of being under the influence of something. A search of petitioner's vehicle revealed marijuana behind the glove compartment and he was arrested.

On January 19, 1973, a felony complaint was issued by a branch office of the District Attorney of the County of Los Angeles, charging petitioner and his friend with possession of marijuana. On January 20, 1973, petitioner was arraigned on that felony charge in a West Los Angeles Branch of the Los Angeles Judicial District. On February 23, 1973, petitioner admitted his guilt and by the discretion of the court the case was disposed of by "Diversion"

under a California Penal Code Section. The matter was diverted until September 26, 1973, at which time the Probation Department of Los Angeles County will submit a progress report on the petitioner. When proceedings are diverted as in this felony case, if the defendant is convicted of any offense during the diversion period, the case is referred back and proceeds.

After arraignment on the felony matter, petitioner received notice by letter that a misdemeanor charge for "driving under the influence" had been filed by the office of the City Attorney of Los Angeles City. The trial court for the misdemeanor charge was a different court than the court appearance for the felony and the courts were many miles apart.

On March 19, 1973, petitioner made a motion to dismiss the misdemeanor complaint on the grounds of unnecessary harassment and multiple prosecution. Motion was denied. State Court of Appeal and State Supreme Court denied hearings.

REASONS FOR GRANTING THE WRIT

1. The due process guaranty of the Fourteenth Amendment of the United States Constitution bars a state from trying an accused more than once for multiple offenses which were committed simultaneously.

The court held in Hoag v. New Jersey, 356 U.S. 464, 78 S.Ct. 829, 2 L.Ed.2d 913, that the due process guaranteed by the Fourteenth Amendment requires that the state not be permitted to attempt "to wear the accused out by a multitude of cases with accumulated trials".

Here, in the instant case, the petitioner was arrested and charged with a felony arising from that arrest. He went to expense in time and money to dispose himself of his obligations for the crime charged but the matter was not disposed of completely as he wanted to do. Another prosecution agency, the law office of another governmental entity filed misdemeanor charges arising out of the same single arrest, using the same evidence and witnesses as necessary for the felony charge as there were two arrests made, the petitioner and his friend.

Petitioner submits that the filing of separate charges should have been made in one filing in the same court and to file in separate courts with different branches of the local governments is unnecessary harassment and causes great hardship on such unfortunate arrestees, financially, and the travel time involved because of the distances of the courts, as well as the added expense to the taxpayers for two trials rather than one.

To permit the multiple filings or subsequent filings as in this case in different and separate court locations is contrary to the due process clause and in practice permits

officers to inflict cruel and inhuman punishment or to harass arrestees to an unnecessary degree.

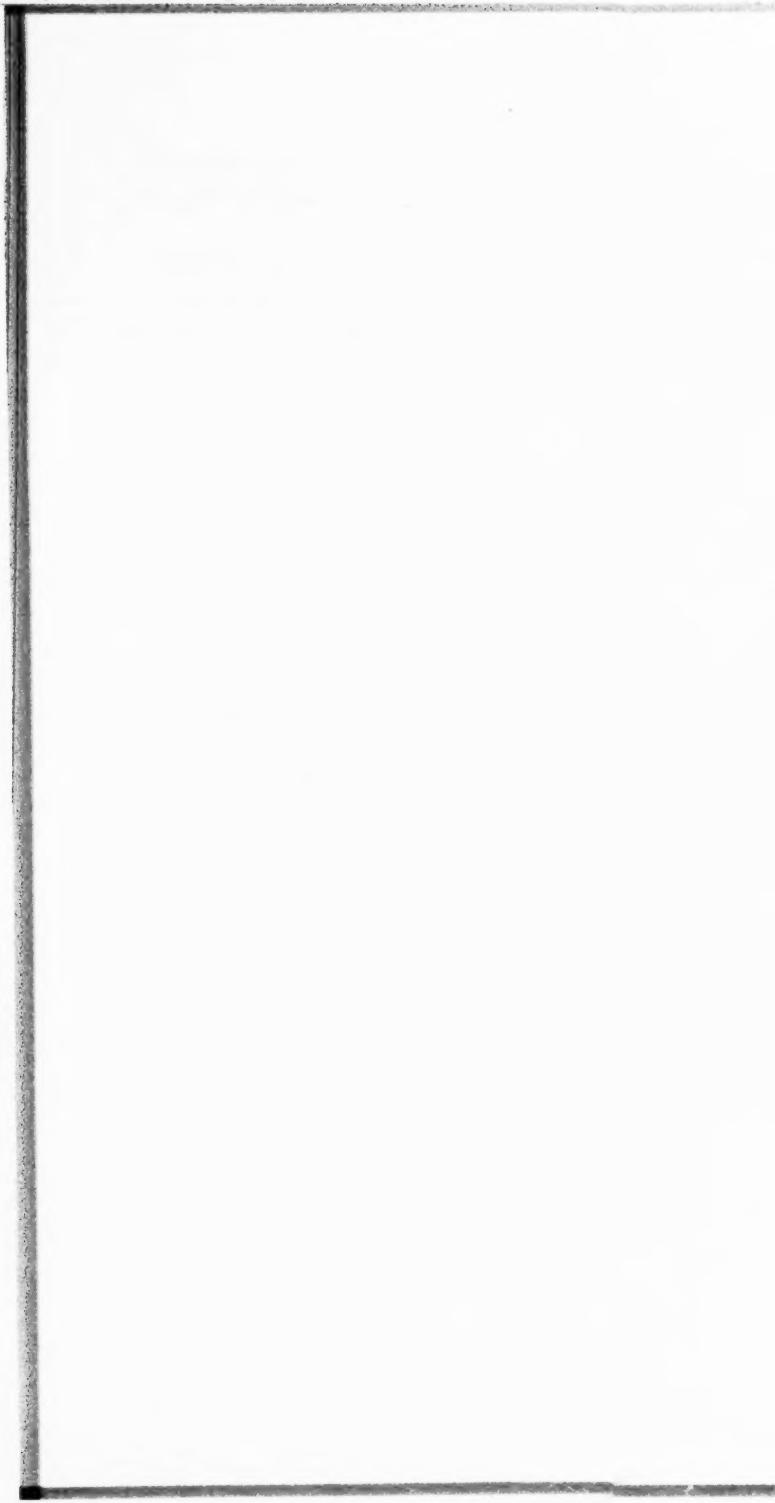
2. The decision of "hearing denied" below conflicts with interprelations of a state statute in light of the due process guaranty of the Fourteenth Amendment of the United States Constitution, as well as State court decisions.

Section 954, Penal Code of the State of California, provides:

> "An accusatory pleading may change two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate courts, and if two or more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated. . ."

Here, the petitioner submits the Felony and Misdemeanor charged separately were in fact connected with each other and should have been filed as one case with two counts.

The California Penal Code Section 954 makes it possible, as it is practical, to have a defendant placed on trial at the same time and place with the same jury, on separate and distinct charges.



People v. Kelly, 203 Cal. 128, 263 P. 226.

The California Court said in Kellett v. Superior Court, 63 Cal. 2d 822, 48 Cal. Rptr. 366,

> ". . . by amendments of this section (954 P.C. supra) legislature has demonstrated its purpose to require joinder of related offenses in single prosecution, in addition to preventing harassment, such joinder avoids needless repetition of evidence and saves state and defendant time and money."

The United States Supreme Court, although affirming that conviction, clearly warned that prosecution of closely related individual offenses at separate trials may constitute an impermissable denial of that fundamental fairness required by the due process clause of the Fourteenth Amendment.

Ciucci v. Illinois, 356 U.S. 571, 78 S. Ct. 839.

Hoag v. New Jersey, supra

Abbate v. United States, 359 U.S. 187 79 S. Ct. 666

Petitioner submits that his multiple charges at separate trials in different courts located miles apart is unfair and needless harassment and a waste of public funds.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Supreme Court of California.

Respectfully submitted,

R. RICHARD FUSILIER

Attorney for Petitioner